STATE OF MINNESOTA
BUREAU OF MEDIATIONS SERVICES
IN THE MATTER OF GRIEVANCE ARBITRATION BETWEEN

ANOKA COUNTY MINNESOTA,

EMPLOYER,

ARBITRATOR'S AWARD
BMS CASE NO. 16-PA-0021
CONTACT INTERPRETATION

LAW ENFORCEMENT LABOR SERVICES, INC.

UNION.

ARBITRATOR:	Rolland C. Toenges
GRIEVANT:	Dan Kissiah
DATE OF GRIEVANCE:	May 8, 2015
DATE ARBITRATOR NOTIFIED:	March 8, 2016
DATE OF HEARING:	May 25, 2016
DATE OF POST HEARING BRIEFS:	June 10, 2016
DATE OF AWARD:	June 24, 2016

ADVOCATES

FOR THE EMPLOYER:	FOR THE UNION:
Scott Lepak, Attorney Barna, Guzy & Steffen, LTD. 200 Coon Rapids Boulevard, #400 Coon Rapids, Minnesota 55433-5894	Scott Higbee, Attorney Law Enforcement Labor Services, Inc. 327 York Avenue St. Paul, Minnesota 55130

ISSUE

Whether the Employer violated the Collective Bargaining Agreement when it reduced the shift length by .25 hours for employees assigned to long shifts. If so, what should be the remedy?

WITNESSES

FOR THE EMPLOYER:	FOR THE UNION:
Dylan Workedtin, Community Corrections, Dir.	Dan Kissiah, Union Steward James Fahrni, Union Steward Diane Erickson, Union Steward Dennis Kiesow, Business Agent

ALSO PRESENT

Mike Roff, Director, Employee Relations
Carey Kohan, Corrections Manager
William Peters, Observer

JURISDICTION

The matter at issue, regarding interpretation of the terms and conditions of the Collective Bargaining Agreement (CBA) between the Parties came on for hearing pursuant to the Grievance Procedure in said Agreement. Relevant provisions of the Grievance Procedure (Article XIV) are as follows:

> Section 1. A. For purposes of this Agreement the term "grievance" means a dispute arising from and concerning the interpretation or application of the express provisions of this Agreement.
>
> Section 2. Step 3. A grievance unresolved in Step 2 and appealed to Step 3 by the Union shall be submitted to arbitration subject to the provisions of the Public Employment Labor Relations Act of 1971 as amended. The selection of an arbitrator shall be made in accordance with "The Rules Governing the Arbitration of Grievances" as established by the Bureau of Mediation Services. The Parties may agree to use the Bureau of Mediation Services' list of arbitrators for any grievance. Absent such agreement, the rules governing the arbitration of grievance established by the Public Employment Relations Board shall apply.
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> Section 3. Arbitrator's Authority.
>
> A. The arbitrator shall have no right to amend, modify, nullify, ignore, add to, or subtract from the terms and conditions of this Agreement. The arbitrator shall consider and decide only the specific issue(s) submitted in writing by the Employer and the Union, and shall have no authority to make a decision on any other issue not so submitted.

B. The arbitrator's decision shall be submitted in writing within thirty (30) days following the close of the hearing or the submission of briefs by the parties, whichever is later, unless the parties agree to an extension.

C. The fees and expenses of the arbitrator's services and proceedings shall be borne equally by the Employer and Union provided that each party shall be responsible for compensating its own representatives and witnesses. If either party desires a verbatim record of the proceedings, it may cause such a record to be made provided it pays for the record. If both parties desire a verbatim record of the proceedings the costs shall be shared equally.

The Union's Grievance Report cites the following provisions of the CBA it alleges to have been violated:[1]

Article II, Recognition.[2]

Section 5. The Union recognizes the labor relations representative designated by the Anoka County Board as the exclusive representative of the Employer and shall meet and negotiate exclusively with such representative. No agreement covering terms and conditions of employment or other matters made between the Union and the Employer shall be binding upon the Employer unless the witnessed signature of the Employer's designated labor relations representative is affixed thereon.

Article VIII, Hours of Work-Premium Pay.[3]

Section 3. Accrual and use of compensatory time is subject to the following limitations.

A. No more than forty (40) overtime hours (60 compensatory hours) can accrue per employee. Any time an employee accrues in excess of sixty

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[1] Union Exhibit #6.

[2] The Union's Grievance Report cited Article II. At the hearing it was clarified that the provision the Union claims to have been violated is Section 5.

[3] The Union's Grievance Report cited Article VIII. At the hearing it was clarified that the provisions the Union claims to have been violated are Sections 3 and 4.

(60) compensatory hours, the excess shall be paid to the employee on the following pay period at the regular rate of pay being earned by the employee during that pay period.

B. All compensatory time accrued by an employee at such time as the employee changes departments, changes status from non-exempt to exempt, or terminates employment shall be paid to the employee at the rate the employee was paid immediately prior to the change of status, or the average pay rate for the previous three (3) years, whichever is higher.

C. The use of compensatory time shall be at the choice of the employee, with the approval of the Employer.

Section 4. The Employer agrees that split shift work will not be scheduled for employees covered by this Agreement except in emergencies. An employee required to work a split shift shall receive cash compensation at one and one half times the regular rate of pay for the hours worked in the split shift.

Article X, Preferred Benefit Plan.[4]

In addition, the Union alleges violation of long established past practice.

The Parties selected Rolland C. Toenges as the Arbitrator to hear and render a decision in the interest of resolving the disputed matter.

The Arbitration hearing was conducted as provided by the terms and conditions of the CBA and the Public Employment Labor Relations Act (MS 179A.01 – 30). The Parties were afforded full opportunity to present evidence, witness testimony and argument bearing on the matter in dispute. All witnesses were sworn under oath and subject to direct and cross-examination.

The Parties stipulated that the matter in dispute was properly before the Arbitrator and there were no procedural or substantive issues.

The Parties agreed to submit post-hearing briefs on or about June 10, 2016

BACKGROUND

[4] The Union's Grievance Report cites Article X as having been violated. At the hearing it was clarified that the Union withdraws this claim.

Anoka County (Employer) is located in the northern tier of the Twin Cities metropolitan area and has a population of about 340,000. The Employer provides a wide variety of typical county services, including adult and juvenile corrections. Generally, Anoka County crime rates tend to be lower that the state average, except for property crimes. The instant dispute arises within the Corrections Department.

Law Enforcement Labor Services, Inc. (Union) is the exclusive representative of a collective bargaining unit consisting of employees in the classifications of Correctional Officer, Work Release Officer, Juvenile Detention Officer and Shift Coordinator. It is within this bargaining unit where the instant dispute arises.

Anoka County Corrections operates on a 24/7 basis, which means functions are staffed 24 hours each day, seven days per week. To accommodate staffing requirements and provide rotation of night shifts, weekends and holidays the Department has what is referred to as a 6/3 schedule, which means staff work six days on and have three days off. There is some variation in the schedule, such as long weeks and short weeks. Within each seven week period, employees work five short weeks (four days) and two long weeks (five or six days.

The aforementioned schedule results in a variation of hours worked in each calendar week. In some weeks hours actually worked exceed the standard 40 and in other weeks hours worked are less than the standard 40. The Employer's payroll system covers a two-week period and is based on 80 hours. Due to the variation in actual hours worked by Corrections employees, hours worked in excess of the standard 80 are banked as compensatory time and used to make up hours in pay periods where actual hours worked are less than 80.

The 24-hour shift structure is 7:00 a.m. to 3:00 p.m., 3:00 p.m. to 11:00 p.m. and 11:00 p.m. to 7:00 a.m. To provide time for staff to receive a shift change briefing

from employees departing the previous shift, they were scheduled to report for their shift one-quarter hour (.25) early. If the employee's actual time worked, including the .25 hour early report, plus time on paid leave exceeds 40 hours for the week, the excess is paid at time and one half (1 ½). Such excess time is accrued as compensatory time, but may not exceed sixty hours (60). Hours accrued in excess of the sixty hour are paid in cash the following pay period. Use of compensatory time is at the discretion of the employee, subject to Employer approval.

In May of 2015, the Employer discontinued the .25-hour early shift report from the long shift schedule, which is the issue in the instant dispute. Later that month, the Union filed a grievance alleging violation of the CBA and adverse economic consequences experienced by employees due to the change. The matter was pursued through the CBA Grievance Procedure without resolution. The matter now comes before the instant proceeding for resolution.

JOINT EXHIBITS

1. Collective Bargaining Agreement – 01/01/14 through 12./31/15
2. Email Correspondence, re. Cheat Sheet
3. New 6/3 Schedule Changes – Cheat Sheet
4. Correspondence from LELS, May 8, 2015
5. Correspondence from LELS, May 20, 2015
6. Step 1 Grievance
7. Correspondence from LELS, June 4, 2015
8. Correspondence from Anoka County, June 3, 2015
9. Step 2 Grievance
10. Email Correspondence, re. Issues With Park
11. Blank Schedule
12. Arbitration Award, November 12, 1996
13. Arbitration Award, November 24, 2007
14. 6/3 Schedule Change Staff Cheat Sheet

15. Certification to Arbitration, 02/16/16
16. Effect of change to 8 hours On the Long Week with 8.25 on short week
17. Effect of 8.25 Hours on All Weeks

POSITIONS OF THE PARTIES

THE UNION SUPPORTS ITS POSITION WITH THE FOLLOWING:

- The Employer's unilateral reduction in the working hours violated the Parties contract and longstanding past practice.
- The Employer unilateral action was not adjusting the work schedule, as was the issue in the 1996 Arbitrations case.
- In the instant case the Employer reduced the work hours.
- The effect of the Employer's action is reduction of employee income.
- The 6/3 schedule with a .25 hour pre-shift start has existed since the early 1990's.
- The Employer has never made a proposal to change the .25-hour pre-start time in negotiations.
- The elimination of the .25-hour pre-start time has caused economic hardship on employees.
- The Employer's action was an attempted end-run around the collective bargaining process and an attempt to procure changes it has sought over the past twenty years.
- On two occasions the Employer attempted to change the schedule to reduce overtime. In the latter case, Arbitrator Anderson commented, ". . . any change . . . is best left to collective bargaining."
- The directive given to staff, to verbally communicate at shift change, necessarily requires some overlap between shifts
- Elimination of the ¼ hour pre-shift pay results in employees losing some 30.25 hours in a calendar year and up to nearly $1,300.
- Of even greater concern is the issue of safety if there is insufficient communications between staff at shift change.

- From the testimony given by Grievant, Dan Kissiah, it is clear that for efficient operations, there is a need for shift overlap.
- The fact that employees on short shift change continue to receive the ¼ hour pre-shift pay demonstrates that the Employer recognizes its value.
- The clear directive given employees by the Employer's Administrator White is that employees are still to begin work early, although if on a long week they will not be paid for doing so.
- It is generally recognized that time spent in mandatory shift briefings is compensable time.[5]
- The resolution of this case is as simple as recognizing that when employees are required to perform duties they are entitled to be paid for those duties.
- There is no reason that employees on short weeks have a greater need for the shift change briefing than those on long weeks.
- Although the Employer asserts a management right to make the disputed change, it also notes that the Parties have spend 20 years addressing payment of overtime during negotiations.
- During these 20 years, the Employer's attempt to amend Article VIII had twice been rejected by the Union and the objections were upheld in interest arbitration.
- MN Statute, 179.A07, requires good faith negotiations over terms and conditions of employment, including hours of employment and compensation thereof.
- The Employer's limitation of shift change briefing directly affects employee safety and imposes a duty to bargain.
- It is clearly arbitrary to apply different start times solely on whether it is a long week or short week – either requires the same 15 minutes or it does not.
- The Employer's argument that short week employees are expected to provide briefing for long week employees is a hit or miss proposition.

[5] 29 CFR Sec. 553.14; Local 889 AFSCME v. State of Louisiana 145 F. 3d 280 (5th Cir. 1998)

- LELS requests the Arbitrator sustain the grievance, restore the overtime hours and make the employees whole.

THE EMPLOYER SUPPORTS ITS POSITION WITH THE FOLLOWING:

- The CBA expressly reserves the Employer's right to eliminate the .25-hour pre-shift time from the work schedule.
- Article VIII, Section 1 provides, "Nothing herein shall be construed as a guarantee of a minimum number of hours of work per day or per week."
- Article V, Section 1, expressly reserves the Employer's right to . . . "schedule working hours and assign overtime," except as may be limited by the express provisions of the Agreement.
- There are no provisions in the CBA that limit the aforementioned rights.
- The Union is specifically precluded from establishing a violation of Article VIII.
- The Employer's management rights, regarding control over schedule, and specifically the 6/3 schedule has historically been recognized as outlined in Arbitrator Wallin's award:

> "The Employer's proposal is found to be a significant structural change without sufficient evidentiary support. It appears that the employer's concerns about accumulation of overtime and the use of compensatory time to generate more overtime arise from the form of work scheduling used. According to the evidence, the Employer instituted the "6 on 3 off" scheduling pattern of its own volition. It is not a collectively bargained schedule. The Employer remains free to implement a different schedule that does not generate frequent overtime, and hence compensatory time if it chooses to do so."

- Arbitrator Wallin's Award confirms the Employer's right to adjust the work schedule so as to not guarantee frequent overtime.
- The Employer was validly exercising its management right to schedule.
- There is no binding past practice in the instant matter, because past practice does not trump clear contract language.

- There is not a binding past practice that would favor the Union, because Wallin's award specifies that the issue is clearly within the Employer's discretion.
- Article XXII, provides that the Parties have agreed that the complete understanding and agreement of the Parties is represented by the CBA and have agreed to waive the right to negotiate on any matter not covered by said CBA.
- Arbitrator Anderson Award does not conflict with the Employer's position in the instant proceeding. Arbitrator Anderson sustained the existing CBA language when a major change was proposed in how overtime was to be determined, noting that such a change is best left to future bargaining.[6]
- In the instant case, there is no change in how overtime is determined, only the amount.
- The .25-hour pre-shift report time no longer has a business purpose. "The staff on current shift will print this report [electronically] (PCI Shift Change Report) at the end of their shift for the oncoming shift to read.[7]

- . . . "The off going C.O. will print off a copy of the days Shift Briefing Report and highlight the items relevant to that shift/floor . . . The shift Leader/Staff Coordinator will check in with each Post staff to ensure communication."[8]
- Savings from the elimination of the .25-hour pre-shift time have been used to convert several part time staff to full time staff.[9]
- Although there are alternative shift schedules that would be simpler to administer, the Employer has chosen to continue the 6/3 schedule, which is generally favored by employees.

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[6] County of Anoka & Law Enforcement Labor Services, Inc.. BMS Case No. 07-PN-0661. (Anderson, 11/24/2007)

[7] Joint Exhibit #3.

[8] Joint Exhibit #2

[9] Testimony of Dylan Warkedtin.

- There is no longer a need for a shift change overlap.
- There is now a system where briefing notes are electronically recorded by staff that will be leaving the shift for review by the incoming staff.
- The Employer made the disputed change for three reasons:
  1. Improve retention of the intermittent employee pool.
  2. Increase benefit-earning staff utilizing overtime cost savings.
  3. Accommodate staff increases added on long and holiday shifts.
- Considering the Arbitrators narrow standard of review, the Employer did not violate any of the CBA provisions cited in the Union's grievance (Articles II, VIII and X).
- At the hearing, the Union was not able to point to any portion of Article II, VIII or X that was violated. The Union indicated that maybe Article VIII, compensatory time could be affected, but could not point to a violation.
- There is little dispute that the Employer has a broad management right to schedule, which is broadly recognized. [10]
- Within the context of the CBA, management's right is well established.
- The CBA Management Rights clause specifically reserves the right to "schedule working hours and assign overtime."
- Similarly, the Hours of Work – Premium Pay Article specifically disclaims a guarantee of a minimum number of hours of work per day or per week.
- More direct on point, Elkouri has noted that shift times are also within this management right. [11]

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[10] Elkouri & Elkouri, How Arbitration works. Management has been permitted to suspend operations temporarily, eliminate double-time work, change the number of shifts, and change the number of days to be worked. P.13-102. This is particularly true where the contract contains no express limitation on work scheduling. Id. "In such an instance, management was permitted to change from a schedule of two 6-hour shifts, 6 days a week, to a schedule of one 8-hour shift, 5 days a week." Id. In addition, Elkouri has noted that "management's right to change from a 5-day work schedule to a 6-day schedule has been upheld."

In validating such changes, arbitrators have spoken of management's right "to schedule the work with a view to optimum efficiency, and have expressed the view that limitations on the right ought not be lightly inferred."

- The Employer was not required to negotiate on the disputed matter and the Grievance should be denied.

DISCUSSION

Anoka County Corrections Department operates 24 hours per day, seven days per week (24/7). Employees work a 6 -3 schedule, which means employee work six days on and then have three days off. Shifts consist of short shifts (four days) and long shifts (five or six days). This rotating schedule is common in 24/7 operations and in the instant case is preferred by employees. The rotation provides for all employees share in working weekends and holidays.

Up until May 2015, employees on all shifts reported to work15-minutes prior to the start of their regular shift. For example, an employee working the 7:00 a.m. to 3:00 p.m. shift reported a 6:45 a.m. Likewise, employees working the 3:00 p.m. to 11:00 p.m. reported at 2:45 p.m.; employees working the 11:00 p.m. to 7:00 a.m. shift reported at 10:45 p.m. Reporting 15-minutes prior to the start of the regular shift provided for the employee coming off a shift to brief the employee coming on regarding information useful or important for the incoming employee to know.

In May 2015, the Employer discontinued the practice of employees reporting 15-minutes early for Long shifts. In the notice given employees regarding this change the Employer stated the following:[12]

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[11] Elkouri & Elkouri, How Arbitration Works. Id at p. 13-104 go 13-105. " . . . where the contract contains no express restrictions on the employer's right to determine the starting tine for work shifts, the employer has been permitted unilaterally to change the starting and stopping time. Even where an agreement specifies the shift starting times, management may be justified in requiring certain employees to report early in order to perform essential pre-shift "start-up work."

[12] Joint Exhibits #2.

> "Please review the attachment as it pertains to the new shift procedures that we will implement on May 16, 2015. In order to eliminate shift briefs as we know them as held in the staff lounge, effective 5/16 staff will report directly to their assigned floor once they turn in their keys at 1st floor Post to begin their shift. The off going C.O. will print off a copy of the days shift Briefing Report and highlight the items relevant to that shift/floor. Items that should be included in shift briefs should be and not limited are such things as: . . . The shift Leader/Shift Coordinator will check in with each Post staff to ensue communication. Staff are also responsible to check their mailboxes and emails daily when working shifts and are responsible for that information.
>
> It is important that staff work shifts according to the new schedule attached to achieve department goals.
>
> Please feel free to talk with Supervisors if you have any questions.
>
> The Shift Bid and Post Orders will be posted in the Staff Lounge Monday 5/4/15 and close on 5/15/15."
>
> The staff on current shift will print this report [PCI Shift Change Report) at the end of their shift for the oncoming shift to read."[13]

The 15-minute period was typically credited at the overtime rate as, on the long shift schedule, the employees work time usually exceeded 40 hours. The record shows that the cost savings from discontinuing the 15-minute pre-shift paid period has been used to increase work hours for part time employees to qualify them for benefit earning status.

The Union's primary objection to discontinuance of the 15-minute pre-shift paid period is that it reduces the number of paid hours employees will receive, particularly considering the 15-minutes were typically paid at the overtime rate. Another Union objection is that the 15-minute paid period, according to Union witnesses, was considered by them as paid time from when they entered the Corrections building until they arrived at their assigned floor/post.

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[13] Joint Exhibit #2.

At issue is whether, under the terms and conditions of the CBA, the Employer has reserved the right to unilaterally reduce overtime that it no longer believes serves a business purpose. Or whether, due to the duration the 15-minute paid period has existed, it has become a binding past practice.

CONTRACT VIOLATION

The Union's Grievance Report cites the following CBA provisions it alleges have been violated:

> ARTICLE II, RECOGNITION.[14]
>
> Section 5. The Union recognizes the labor relations representative designated by the Anoka County Board as the excusive representative of the Employer and shall meet and negotiate exclusively with such representative. No agreement covering terms and conditions of employment or other matters made between the Union and the Employer shall be binding upon the Employer unless the witnessed signature of the Employer's designated labor relations representative is affixed thereon.
>
> ARTICLE VIII, HOURS OF WORK – PREMIUM PAY.[15]
>
> Section 3. Accrual and use of compensatory time is subject to the following limitations.
>
> A. No more than forty (40) overtime hours (60 compensatory hours) can accrue per employee. Any time an employee accrues in excess of sixty (60) compensatory hours, the excess shall be paid to the employee on the following pay period at the regular rate of pay being earned by the employee during that pay period.
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> B. All compensatory time accrued by an employee at such time as the employee changes departments, changes status from non-exempt to exempt or terminates employment shall be paid to the employee at the

[14] The Union's Grievance Report cited Article II, however at the hearing it was clarified that the provision the Union claims to have been violated is Section 5.

[15] The Union's Grievance Report cited Article VIII. At the hearing it was clarified that provisions the Union claims to have been violated are Sections 3 and 4.

rate the employee was paid immediately prior to the change of status, or the average pay rate for the previous three (3) years, whichever is higher.

C. The use of compensatory time shall be at the choice of the employee, with the approval of the Employer.

Section 4. The Employer agrees that split shift work will not be scheduled for employees covered by this Agreement except in emergencies. An employee required to work a split shift shall receive cash compensation at one and one half times the regular rate of pay for the hours worked in the split shift.

ARTICLE X. PREFERRED BENEFIT PLAN[16]

PAST PRACTICE

The Union's Grievance Report also claims CBA violation based on "past practice."

The record shows that the 6-3 shift schedule and the 15-minute paid pre-shift period have been in effect for some 20 years. Union witnesses testified that they do not recall the Employer proposing a change during negotiations. However, during this 20-year time period the issue of overtime has been addressed in at least two arbitration proceedings between the Parties.[17]

In a 1996 arbitration proceeding, the Employer proposed substituting the Fair Labor Standards Act Public Safety Employee Exemption for the existing CBA overtime/compensatory time provisions. Under this exemption overtime would be payable at time and one half for all hours worked in excess of 171 hours in a 28-day period. There was a question whether the issue of overtime had been properly certified to arbitration. However, Arbitrator Wallin in awarding no change commented as follows:

[16] The Union's Grievance Report cites Article X as having been violated. At the hearing, the Union withdrew this claim.

[17] Reference was made to several arbitration proceedings affecting this bargaining unit, although only two were cited. (BMS Case No 96-PN-912, Wallin 1996 and BMS Case No 07-PN-0661, Anderson 2007)

> ". , . According to the evidence, the Employer instituted the "6 on 3 off" scheduling pattern of its own volition. It is not a collectively bargained schedule. The Employer remains free to implement a different schedule that does not generate frequent overtime, and hence compensatory time, if it chooses to do so."

In a 2007 arbitration proceeding, the issue of "Hours of Work – Method of Overtime Calculation" was certified as an issue in dispute. While the Union's position was for no change, the Employer's position was to substitute the Fair Labor Standards Act Public Safety Employee Exemption for the existing CBA overtime/compensatory time provisions. The Employer's position was proposed as a conditional change in the event its position on the general and merit increases were not awarded. Arbitrator Anderson awarded no change in the existing CBA provision, commenting that such a change is ". . . best left to future bargaining."

A commonly cited condition for a binding "past practice" is that it ". . . must be 1) unequivocal; 2) clearly enunciated and acted upon; 3) readily ascertainable over a reasonable period of time as a fixed, and established practice accepted by both Parties."[18]

In the instant case, the evidence shows the practice is unequivocal, is well known by both Parties and has existed for some 20 years. Although acceptable to the Union, the evidence shows the practice has been a subject of concern to the Employer, as evidenced by its position in the two referenced arbitration proceedings. While Arbitrator Wallin found the work schedule to be within the Employer's discretion to change, as it was not a negotiated matter, Arbitrator Anderson did not address the Employer's discretion to make changes, but commented the change would be best negotiated.

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[18] Elkouri & Elkouri, How Arbitration Works, Fifth Ed., p632.

The issue of "past practice" typically arises when a practice is inconsistent with the language of the CBA. In the instant case, such an inconsistency does not appear to exist, unless the authority of the Employer to unilaterally establish work schedules no longer exists. The record shows the work schedule at issue was unilaterally implemented by the Employer and was not negotiated. Further, the record shows that the issue of work schedules was not a subject in negotiations for the existing CBA.[19]

Further inquiry is needed to determine whether the language of the CBA continues to provide the Employer authority to unilaterally establish work schedules.

MANAGEMENT RIGHTS

The Employer argues that the CBA expressly reserves its right to eliminate the 15-minute pre-shift period from the work schedule. In support of the Employer's position, it points to the following CBA provisions:

> ARTICLE V. MANAGEMENT RIGHTS AND DIVISION OF RESPONSIBILITY
>
> Section 1. Except as limited by the specific provisions of this Agreement, the Employer shall retain whatever rights and authority are necessary for it to operate and direct the affairs of Anoka County in all of its various aspects including but not limited to the right to direct the working forces; to plan, direct and control all the operations and services of the County; to determine the methods, means, organization and number of personnel by which such operations and services are to be conducted; to assign and transfer employees within the department; to schedule working hours and assign overtime; to hire, promote, suspend, discipline, or discharge employees; to lay off or relieve employees due to lack of work or other reasons as provided herein; to make and enforce reasonable rules and regulations to change or eliminate existing methods, equipment or facilities; to determine the utilization of technology and

[19] Testimony of Union Witnesses Dan Kissiah, James Fahrni, Dennis Kiesow and Employer Witness Dylan Warkedtin.

to take whatever actions may be necessary to carry out the missions of the County in emergencies. [Emphasis Added]

ARTICLE VIII. HOURS OF WORK-PREMIUM PAY

Section 1. This Article is intended only to define the normal hours of work and normal scheduling and to provide the basis for the calculation of overtime or other premium pay. Nothing herein shall be construed as a guarantee of a minimum number of hours of work per day or per week. [Emphasis Added]

ARTICLE XXII. COMPLETE AGREEMENT AND WAIVER OF BARGAINING

This Agreement shall represent the complete Agreement between the Union and the Employer. The Parties acknowledge that during the negotiations which resulted in this Agreement, each had the unlimited right and opportunity to make requests and proposals with respect to any subject or matter not removed by law from the area of collective bargaining, and that the complete understandings of and agreements arrived at by the parties after the exercise of that right and opportunity are set forth in this Agreement. Therefore, the Employer and Union, for the life of this Agreement, each voluntarily and unqualifiedly waive the right and each agrees that the other shall not be obligated to bargain collectively with respect to any subject or matter referred or covered in this Agreement or with respect to any subject or matter not specifically referred to or covered in this Agreement, even though such subject matter may not have been within the knowledge or contemplation of either or both of the parties at the time that they negotiated or signed this Agreement. [Emphasis Added]

FINDINGS

The evidence does not support a finding that CBA Articles II, VIII or X have been violated by the Employer's discontinuance of the 15-minute paid pre-shift period.

Article II, Section 5 is not relevant to the Union's claim that it was violated by the Employer's failure to meet and negotiate. A fair reading of this Section is

it simply requires the Union to recognize the Employer's designated representative as the Employer's exclusive representative for bargaining.

Article VIII, Section 3 is not relevant to the union's claim that it was violated by the Employer's failure to meet and negotiate. A fair reading of this Section is that it simply limits the maximum compensatory time that can be accrued, the method of payment and conditions for its use.

Article VIII, Section 5 is not relevant to the Union's claim that it was violated by the Employer's failure to meet and negotiate. A fair reading of this Section is that it relates only to conditions when split shifts will be assigned and the method of payment.

The language of the CBA clearly provides the Employer authority to reduce the number of work hours, including overtime hours. This authority is clearly found in Article VIII, Section 1. " . . . Nothing herein shall be construed as a guarantee of a minimum number of hours of work per day or per week."

The CBA language of Article VIII, setting forth the Employer's authority to reduce work hours so as to avoid overtime, is further bolstered by the language of Articles V and XXII.

The Employer's authority to utilize technology as a means of conducting shift change briefings, rather than verbal briefings in a lounge setting, is set forth in CBA, Article V, Management Rights, which includes: ". . . to determine the utilization of technology."[20]

[20] Employer Witness Dylan Warkedtin testified that the computer system now takes the place of verbal briefings and makes it possible to include more information.

The Union's argument lacks merit that work time should include time from entering the Corrections building until arriving at their assigned floor/post within the building. This is no different than any Anoka County employee who arrives at the building where they work and then reports to their assigned work location within the building.[21]

There is no evidence that the cited CBA provisions, setting forth the Employer's authority to schedule work hours so as to avoid overtime, have been modified by negotiations or past practice.

The Union's claim of "past practice" is without merit. The practice is within the Employer's authority under the CBA to continue it or unilaterally make a change.

AWARD

The grievance is denied.

The Employer's authority to reduce work hours so as to avoid overtime is clearly set forth in the CBA.

CONCLUSION

The Parties are commended on the professional and thorough manner with which they presented their respective cases. It has been a pleasure to be of assistance in resolving this grievance matter.

Issued this 24th day of June 2016 at Edina, Minnesota.

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ROLLAND C. TOENGES, ARBITRATOR

[21] Union Witness, Diane Erickson, testified that once inside the main door she can go directly to her work area, which takes about a minute. Union Witness Dan Kissiah testified that after entering building, the key exchange and passing into secure area might take several minutes.